



SENATE BILL 290: ABC Regulatory Reform Bill.

2019-2020 General Assembly

Committee:		Date:	December 12, 2019
Introduced by:		Prepared by:	Chris Saunders Staff Attorney
Analysis of:	S.L. 2019-182		

OVERVIEW: *S.L. 2019-182 makes the following changes to the alcohol laws:*

- *Allows the holder of a distillery permit to obtain permits for on-premises malt beverage, on-premises unfortified wine, on-premises fortified wine, and mixed beverages and sell those types of alcoholic beverages for consumption at the distillery.*
- *Allows the holder of a distillery permit to sell mixed beverages for consumption at the distillery. If a distillery elects to sell mixed beverages containing spirituous liquor other than that produced at the distillery, the distillery must obtain a mixed beverages permit.*
- *Authorizes ABC stores to allow the purchase of individual bottles of spirituous liquor purchased through the special order process, and to sell in store any bottles received in excess of what was purchased by the requesting customer.*
- *Directs local ABC boards to fulfill an order by a mixed beverages permittee for individual bottles or cases of spirituous liquor produced by an eligible distillery that are listed a regular code item for sale in the State.*
- *Allows distilleries to issue purchase-transportation permits for spirituous liquor sold by the distillery, and allows ABC store employees to issue purchase-transportation permits, if authorized by the local board chairman.*
- *Allows spirituous liquor tastings to be conducted in ABC stores, subject to several limitations.*
- *Allows retail permit holder private label brands of malt beverages to be sold exclusively to the retailer that owns the brand name or to all retail permit holders within each territory without discrimination, at the retail permit holder's discretion.*
- *Provides that a contract brewery that manufactures malt beverages is responsible for all aspects associated with manufacturing the product, subject to the rules of the Commission and the Department of Revenue.*
- *Allows malt beverage tastings at farmers markets.*
- *Allows on-premises or off-premises malt beverage permittees to transfer malt beverages to another on-premises or off-premises malt beverage permittee that is under common ownership or control of the transferor. The permittee is limited to no more than four such transfers per calendar year.*
- *Directs the Commission to increase the maximum allowed discount for malt beverages and wine from 25% to 35%.*

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Director



Legislative Analysis
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Senate Bill 290

Page 2

- *Defines "premises" to mean a fixed permanent establishment, including all areas inside or outside the licensed establishment, where the permittee has control through a lease, deed, or other legal process.*
- *Authorizes the sale of up to two alcoholic drinks at one time to a patron, if the alcoholic drinks does not contain spirituous liquor.*
- *Allows the sale and consumption of alcohol at bingo games.*
- *Exempts breweries not engaged in the preparation of food on the premises from the health code regulations governing the sanitation of establishments that prepare or serve drink or food for pay.*
- *Prohibits any jurisdiction located in a county that already has an ABC board from holding an ABC store election unless they negotiate a merger with an existing ABC board and makes those details available to the public prior to the election.*
- *Requires local ABC boards to accept electronic payments in the form of debit cards or electronic transfer, but not by credit card or charge card, for any spirituous liquor purchased by a mixed beverage permittee.*
- *Requires the Commission to make all forms required to apply for and receive a permit available on the Commission's Web site, and allow for electronic submission of those forms to the extent practicable, including submission with an electronic signature.*
- *Creates a common area entertainment permit for common areas in multi-tenant establishments, which allows customers to exit a permitted premises with an open container and consume the alcohol in the common area of a multi-tenant establishment.*
- *Creates a delivery service permit, which allows a permit holder's employee or independent contractor to deliver malt beverages, unfortified wine, or fortified wine on behalf of a retailer to an individual purchaser.*
- *Allows breweries to sell the malt beverages owned by the brewery for on- or off-premises consumption, regardless of the results of any malt beverage election, upon obtaining the appropriate permit.*
- *Allows sports and entertainment venues to obtain on-premises fortified wine and special occasion permits.*
- *Repeals the purchase-transportation permit requirement for mixed beverage permittees for fortified wine and spirituous liquor and allows any amount to be purchased and transported by mixed beverage permittees, an employee of a mixed beverage permittee, or an employee of a local board transporting to a mixed beverage permittee.*
- *Requires the Commission to make quarterly reports, beginning October 15, 2019, to the chairs of the Joint Legislative Oversight Committee on Justice and Public Safety detailing the progress made in bidding and selecting an independent contractor for the receipt, storage, and distribution of spirituous liquor at and from the State warehouse.*
- *Allows local ABC boards to use their own employees or contract with an independent contractor to provide delivery of spirituous liquor purchased by a mixed beverage permittee.*
- *Directs the Program Evaluation Division (PED) to study the actions the Alcoholic Beverage Control Commission is authorized to take for violations of Chapter 18B of the General Statutes.*

Senate Bill 290

Page 3

Sections 26 and 29 of this act became effective July 29, 2019. Except as otherwise provided, the remainder of this act became effective September 1, 2019.

CURRENT LAW AND BILL ANALYSIS:

Section 1 allows the holder of a distillery permit to obtain permits for on-premises malt beverage, on-premises unfortified wine, on-premises fortified wine, and mixed beverages and sell those types of alcoholic beverages for consumption at the distillery.

Section 2 allows the holder of a distillery permit to sell mixed beverages for consumption at the distillery. If a distillery elects to sell mixed beverages containing spirituous liquor other than that produced at the distillery, the distillery must obtain a mixed beverages permit.

Section 3 authorizes ABC stores to allow the purchase of individual bottles of spirituous liquor purchased through the special order process, and to sell in store any bottles received in excess of what was purchased by the requesting customer.

This section also directs local ABC boards to fulfill an order by a mixed beverages permittee for individual bottles or cases of spirituous liquor produced by an eligible distillery that are listed a regular code item for sale in the State. If the local board cannot fulfill the order because it is not in the local board's stock inventory or the order cannot otherwise be fulfilled within the time period requested by the permittee, the local board must notify the ABC Commission (Commission) within 48 hours of the request for the order and request authorization for direct shipment. The Commission must then determine if the eligible distillery desires to directly ship the ordered product directly to the local board, and if so the Commission must allow the eligible distillery to ship the spirituous liquor ordered to the local board for the fulfillment of the mixed beverages permittee's order. The local board must acknowledge receipt of the merchandise on the shipping documents and forward them to the State ABC warehouse for processing through the accounting system as though the merchandise were shipped from the State ABC warehouse.

For purposes of this section, an "eligible distillery" is a distillery that (i) sells, to consumers at the distillery, to exporters, to local boards, and to private or public agencies or establishments of other states or nations, fewer than 10,000 proof gallons of in-house brand spirituous liquors distilled and manufactured by it at the permit holder's distillery per year, and (ii) that is either the holder of a distillery permit pursuant to G.S. 18B-1105 or is a business located outside the State that is licensed or permitted to manufacture spirituous liquor in the jurisdiction where the business is located and whose products are lawfully sold in this State.

This section also directs the Commission to develop and implement an Internet-based system to facilitate the sale and purchase of regular approved list items and special order list items of spirituous liquor by and among local ABC boards.

This section became effective September 1, 2019, and the special order provision applies to orders placed on or after that date.

Section 4 removes current restrictions on what distilleries can sell at the distillery for off-premises consumption to a visitor who takes a tour (currently limited to 5 bottles per person in a 12-month period and requires a "North Carolina Distillery Tour Commemorative Spirit" sticker). This section also provides that a distillery is not subject to the prohibitions against holding financial interests in, and lending or giving things of value to a retailer with respect to the distillery's transactions with the retail business allowed on its premises.

This section became effective September 1, 2019, and applies to sales made on or after that date.

Senate Bill 290

Page 4

Section 5 allows distilleries to issue purchase-transportation permits for spirituous liquor sold by the distillery. A purchase-transportation permit allows a person to purchase and transport an amount of spirituous liquor greater than eight liters.

This part also allows any employee of an ABC store to issue a purchase-transportation permit, if he or she is authorized to issue permits by the local board chairman.

This section became effective August 1, 2019, and applies to purchases made on or after that date.

Section 6 allows spirituous liquor tastings to be conducted in ABC stores. A local board holding tastings must provide North Carolina distillery permit holders with reasonable opportunities to conduct tastings. This part creates additional limitations on spirituous liquor tasting conducted in ABC stores including the following:

- Events can only be held between 1:00 p.m. and 7:00 p.m and cannot last more than 3 hours.
- Each store can hold no more than three per calendar week, and no more than two at the same time.
- A consumer can sample no more than ½ oz. in any calendar day.
- Advertising is limited to posting at the ABC store and local board offices, and notification to mixed beverage permittees.
- No employee of a local board can participate in or conduct a tasting in an ABC store.

Section 7 allows retail permit holder private label brands of malt beverages to be sold exclusively to the retailer that owns the brand name or to all retail permit holders within each territory without discrimination, at the retail permit holder's discretion.

Section 8 provides that a contract brewery that manufactures malt beverages is responsible for all aspects associated with manufacturing the product, subject to the rules of the Commission and the Department of Revenue. The brewery, not the contract brewery, is responsible for registering the contracted product with the Commission, submitting the appropriate reports regarding the malt beverages, and remitting the appropriate taxes if required by those rules. This section became effective September 1, 2019, and applies to taxes collected on or after that date.

Section 9 allows malt beverage tastings at farmers markets.

Section 10 expands the authorization of on-premises and off-premises malt beverage permit holders to allow permittees to transfer malt beverages to another on-premises or off-premises malt beverage permittee that is under common ownership or control of the transferor. The permittee is limited to no more than four such transfers per calendar year. Other transfers by on-premises or off-premises malt beverage permittees, the purchase of malt beverages by a retail permittee from another retail permittee for the purpose of resale, and the sale of malt beverages by a retail permittee to another retail permittee for the purpose of resale are unlawful. Transfers of a particular brand of malt beverages can only be between transferors and transferees located within the territory designated between the brewery and the wholesaler on file with the Commission. The transferor must notify each wholesaler who distributes the product of the transfer prior to or contemporaneous with the transfer, in writing or verifiable electronic format, and identify the transferor, the transferee, the transfer date, quantity, and items transferred.

Section 11 directs the Commission to modify the rule on discounts for malt beverages or wine, to increase the allowed discount from 25% to 35%.

Section 12 defines "premises" to mean a fixed permanent establishment, including all areas inside or outside the licensed establishment, where the permittee has control through a lease, deed, or other legal process.

Senate Bill 290

Page 5

Section 13 authorizes the sale of more than one alcoholic drink to a patron at one time, but no more than two at one time, with the following limitations:

- Not more than two alcoholic beverage drinks at one time if the alcoholic drinks are (i) a malt beverage, (ii) unfortified wine, or (iii) fortified wine.
- Not more than one alcoholic drink at one time if the drink is a mixed beverage or contains spirituous liquor.

This provision does not apply at a stadium, athletic facility, or arena on the campus or property of a public college or university; or during a sports event sponsored by a public college or university. This section became effective September 1, 2019, and applies to sales made on or after that date.

Section 14 allows the sale and consumption of alcohol at bingo games. This part became effective September 1, 2019, and applies to offenses committed on or after that date.

Section 15 exempts breweries not engaged in the preparation of food on the premises from the health code regulations governing the sanitation of establishments that prepare or serve drink or food for pay.

Section 16 restricts the creation of new ABC boards by prohibiting any jurisdiction located in a county that already has an ABC board from holding an ABC store election unless they negotiate a merger with an existing ABC board and make those details available to the public prior to the election. In a county where there is currently no ABC board in the county, only a county election can be held. This section became effective September 1, 2019, and applies to elections held on or after that date.

Section 17 requires local ABC boards to accept electronic payments in the form of debit cards or electronic transfer, but not by credit card or charge card, for any spirituous liquor purchased by a mixed beverage permittee. No fee can be charged for accepting electronic payments. This section became effective October 1, 2019, and applies to sales made on or after that date.

Section 18 requires the Commission to make all forms required to apply for and receive a permit available on the Commission's Web site, and allow for electronic submission of those forms to the extent practicable, including submission with an electronic signature. This section also requires the Commission to accept electronic payments for any permit fees. Electronic payments under this section include charge card, credit card, debit card, or electronic funds transfer. The Commission can charge a fee of not more than \$5 to cover the costs of processing forms and accepting payments electronically. This section became effective September 1, 2019, and applies to permits applied for on or after that date.

Section 19 creates a common area entertainment permit for common areas in multi-tenant establishments, which allows customers to exit a permitted premises with an open container and consume the alcohol in the common area of a multi-tenant establishment. A multi-tenant establishment does not include a shopping mall that has more than 50% of the shopping mall's common areas, measured in acreage or square footage, enclosed and air-conditioned. This section also provides requirements for the common area, limits patrons to one alcoholic drink at a time, requires the container to clearly identify the premises from which the beverage was purchased and establishes other restrictions for this permit. The fee for a common area entertainment permit is \$750.

Section 20 creates a delivery service permit, which allows a permit holder's employee or independent contractor to deliver malt beverages, unfortified wine, or fortified wine on behalf of a retailer to an individual purchaser. This section has requirements for training, handling of funds, age verification, and package labeling. Deliveries can only be made during lawful sales times for the jurisdiction and cannot be made to jurisdictions that have not authorized the sale of the alcoholic beverages. A delivery service permittee cannot deliver to the premises of another licensed retailer or more than 50 miles from the

Senate Bill 290

Page 6

retailer's licensed premises. A violation of the alcohol laws occurring when delivering to a residence hall located on the premises of an institution of higher education is subject to a fine of up to \$1,000 for a first violation, \$1,500 for a second violation within three years of the first violation, and \$2,000 for a third or subsequent violation within three years of the first violation. If there are two or more violations within three years by a delivery service permittee occurring in a residence hall on the premises of an institution of higher education in which the Commission is entitled to suspend or revoke a permit, the Commission can accept an offer in compromise to pay a penalty of not more than \$10,000.

The fee for a delivery service permit is \$400. The ABC Commission began accepting permit applications and approving training programs September 1, 2019, and began issuing permits on December 1, 2019.

Section 21 allows breweries to sell the malt beverages owned by the brewery for on- or off-premises consumption, regardless of the results of any malt beverage election, upon obtaining the appropriate permit. This section repeals the existing farm brewery provision that allows sales in jurisdictions where sale of malt beverages has not been authorized. This section became effective October 1, 2019.

Section 22 allows sports and entertainment venues to obtain on-premises fortified wine and special occasion permits.

Section 23 repeals the purchase-transportation permit requirement for mixed beverage permittees for fortified wine and spirituous liquor and allows any amount to be purchased and transported by mixed beverage permittees, an employee of a mixed beverage permittee, or an employee of a local board transporting to a mixed beverage permittee. An independent contractor employed by either the mixed beverage permittee or the local board is still required to obtain the purchase-transportation permit. This section became effective September 1, 2019, and applies to fortified wine and spirituous liquor purchased on or after that date.

Section 24 requires the Commission to make quarterly reports, beginning October 15, 2019, to the chairs of the Joint Legislative Oversight Committee on Justice and Public Safety detailing the progress made in bidding and selecting an independent contractor for the receipt, storage, and distribution of spirituous liquor at and from the State warehouse. The reporting requirement expires the earlier of the date of the award of the contract or January 1, 2022.

Section 25 allows local ABC boards to use their own employees or contract with an independent contractor to provide delivery of spirituous liquor purchased by a mixed beverage permittee. The local board can charge a delivery fee if it provides delivery of spirituous liquor to mixed beverage permittees. Mixed beverage permittees can contract with an independent contractor to provide delivery from an ABC store or warehouse to the permittee's premises. This section became effective September 1, 2019, and applies to deliveries made on or after that date.

Section 26 directs the Program Evaluation Division (PED) to study the actions the Alcoholic Beverage Control Commission is authorized to take for violations of Chapter 18B of the General Statutes. The study must include an examination of (i) the proportionality of the punishment that can be imposed under G.S. 18B-104 in relation to the violation, (ii) the remainder of the law set forth in G.S. 18B-104 to identify any areas in which the law can be lacking, and (iii) the process utilized and punishment authorized by other alcoholic beverage control states for violations of their alcoholic beverage laws. PED must report their findings to the Joint Legislative Program Evaluation Oversight Committee by March 15, 2020.

Section 27 requires the Commission to adopt rules consistent with the provisions of this act.

Section 28 provides that if any portion of this act is found invalid, other provisions that can be given effect without the invalid provision must still be effective.

Senate Bill 290

Page 7

EFFECTIVE DATE: Sections 26 and 29 of this act became effective July 29, 2019. Except as otherwise provided, the remainder of this act became effective September 1, 2019.

Susan Sitze, Staff Attorney, substantially contributed to this summary.